

THE PROCESS OF PURCHASE OF A PROPERTY IN SPAIN

The acquisition of properties in Spain implies a number of legal obligations.

If you decide to purchase a property in Spain, which is the legal processing to be followed?

1.- PRIOR QUESTIONS TO THE PURCHASE:

➤ **OBTAINING A N.I.E. NUMBER (tax identification number for foreigners)**

The N.I.E. is an identification number for foreigners for fiscal purposes, necessary to carry out any economic activity in Spain. It has to be handed over to the Notary and is necessary for any tax payment. The N.I.E. number has to be requested in the National Police with a copy of your passport, legalized by a Notary and is issued two or three weeks later.

➤ **GRANTING OF A POWER OF ATTORNEY**

If you want to simplify the legal processing of purchase, or you may not be present to sign all the documents related to purchase yourself, it is recommendable to grant a power of attorney to your legal representative, containing a list of capabilities, which s/he is enabled to carry out from the beginning of the purchase/sale.

You can grant the power of attorney in front of a public notary in Spain, in front of a notary in your country of origin, or in the Spanish Consulate (it is necessary to fix an appointment). If the power is granted in front of a Notary in the country of origin, it has to be translated into Spanish and the signature of the notary has to be legalized with the "Apostil of the Hague". If it is granted by a Spanish Consul, neither translation, nor legalization is necessary.

➤ **EXAMINATION OF THE LEGAL STATE OF THE PROPERTY:**

Once you have chosen the property you wish to purchase, ILLESLEX carries out a due diligence containing the main details of the property and especially a study about its legality.

Considering that the purchase of a property on rural plots in many cases poses the problem of housings built without municipal license, a study of the legality and if the legalization is possible is carried out.

In addition we carry out a study of the documentation to be required from the vendor for the completion of the purchase granting the public deed of purchase. As well we study the existence of liens or encumbrances that may burden on the property.

We advise our customers to commission this survey to Illeslex Abogados before the signature of any private contract and especially before the handover of any amount, because the conclusion may be, that the purchase is not advisable.

2.- PRIVATE CONTRACT:

To acquire the ownership of a property in Spain it is not necessary to sign a public deed (notary formalization), although it is necessary for its registration in the Property Registry. As we will explain later the registration in the Registry is very important, although optional.

Once the vendor and the buyer have agreed the price, conditions of payment and other agreements they consider appropriate an **option contract** or a **private purchase contract with deferred payment** is signed.

In case both parties are in agreement and the buyer is already in possession of the necessary financing of the purchase, the public deed can be directly granted in front of a Notary, chosen by the buyer.

Nevertheless in the majority of cases an **option contract to purchase** is signed and in rarer cases a **private purchase contract** with deferred payment of the price.

➤ **Option contract of purchase:**

The **option contract** is a private contract and binding for the vendor. In consequence he obliges himself with it to sell the property to the purchaser. Usually with signature of this contract is paid a 10% of the purchase price as option rate, although the percentage or amount of the option rate may be freely agreed between the parties, based on the temporary reservation established in the contract. This option rate can be paid either directly to the vendor or deposited in the bank account of a third party, which usually is the lawyer involved in the purchase, or of the estate agent, who carried out the operation. To the buyer is granted a time limit between one and three months to exercise the option. Exercising the option means in practice, that the purchaser notifies to the vendor that he wishes to buy and grant the public deed of purchase, communicating a day and time of appointment at the notary to sign the public deed of purchase. In the option contract are agreed the consequences of failure to fulfill the contract, in case the vendor or the buyer finally do not appear to grant the public deed of purchase in the notary.

In case the purchaser fails to appear normally the parties agree that the option rate will be withhold by the vendor and the contract is cancelled. If it is the vendor who fails, the buyer is enabled to choose between requiring from the vendor to grant the public deed of purchase, or that he refunds the received and deposited option rate plus another amount of the same quantity.

This purchase option contract does not assign the property in terms of a purchase, it only grants a right to purchase and for the vendor an obligation to sell.

➤ **Private Purchase Contract**

The private purchase contract, less common, is signed, when the buyer wants to purchase the property from the moment of signature of this private contract. In this type of contract is agreed the deferred price, the form of payment, the date of the granting of the public deed and the circumstances of default and cancellation of the contract.

3.- PUBLIC DEED OF SALE:

The granting of the public deed of sale is indispensable for the registration of the acquired property in the name of the buyer in the Property Registry. Once registered no liens of debts on behalf of the vendor, registration of charges on the property, or the sale of the property can be implemented, because the property does no longer appear in the name of the vendor in the Property Registry. The public deed is granted in front of a notary, including the legally required documentation, such as proofs of carried out payments and the last receipt of the Municipal Property Tax (IBI).

In addition, the vendor is required to hand over the certificate of occupancy, the energy efficiency certificate and in case of rural, urban or point ownership various other documents.

Before the granting of the public deed a detailed estimate of costs for all concepts until the registry of the title deed of sale in the Property Registry will be sent to the clients, rates which are different for the vendor and the purchaser.

These costs consist in: Notary, Property Registry, lawyer fees and purchase taxes.

4.- COSTS ASSOCIATED WITH THE PURCHASE:

➤ NOTARY AND PROPERTY REGISTRY FEES

After the granting of the public deed have to be paid the fees of the notary, whereby the original of the deed is provided for its registration in the Property Registry. Before this the taxes related to the operation and the municipal tax has to be paid.

It is recommended to change the bearer of all the bank direct debits regarding the supplies related to the property, in order to avoid default of payments and the related troubles.

Due to this, the vendor has to provide the last bills of the utility companies (water, gas, electricity, telephone, etc.) to the purchaser. Our office provides this service of change of owner.

➤ TAXES

Once formalized the deed of sale in front of the Notary, the following taxes must be paid:

1.- LOCAL TAXES:

○ **MUNICIPAL TAX – Tax of increase of value on urban properties.**

As result of the transfer of ownership of a property, or the provision, or transfer of property rights, the tax of increase of value on urban land has to be paid.

In the case of sale of a property the payment of the tax corresponds to the person, company or entity, who sells, due to the increase of value the plot has experienced during the ownership.

If the vendor is a non-resident natural person, company or entity in Spain, the purchaser is in charge of the payment of the municipal tax as substitute on behalf of the vendor, who is the person obliged to pay this tax.

Therefore, the vendor must hand over the amount of the tax to the buyer.

Terms: The payment must be completed **within 30 working days** to count from the date the transfer has been formalized (public deed).

Location: In the correspondent town hall, providing a copy of the deed.

Quote: The amount varies depending on the cadastral value (listed on the receipt of ground tax - IBI) and the number of years the property has been in the assets of the vendor, meaning between the purchase and the sale.

Since January 2013 it is mandatory to provide the **proof of payment of the municipal tax as condition to register the purchase in the Property Registry. However, if for any reason the payment cannot be proved, the Registry is enabled to carry out the registration of the property, always if it gets an authorization to communicate the legal act to the town hall, so that it is informed about the operation.*

2.- GOVERNMENTAL TAXES:

○ REAL ESTATE TRANSFER TAX.

This tax is levied on the sale of second-hand properties or successive transmissions.

Taxpayer: It has to be paid by the purchaser.

Term: The deadline for the settlement and payment of taxes is **one month** from the date of the act or contract, that means, the date of the granting of the public deed or the private contract.

The tax rate varies according to the Autonomic Community and the base of calculation is the purchase price that appears in the deed.

On the Balearic Islands the payable amount is obtained by applying on the taxable base (value of the property fixed in the deed) the rate resulting from the following schedule:

From January 1st, 2013

Base of the tax	Applicable rate
0,00 € a 400.000,00 €	8%
400.000,01 € a 600.000,00 €	9%
600.000,01 € and more	10%

**Garage places not attached to the housing, maximum two per property are taxed with 8% on a value of 30.000 € and 9% exceeding that amount.*

- **VALUE ADDED TAX (VAT):**

The VAT is levied on the first transfer of real estate objects, meaning the tax only is applied on properties of new construction and first transmission. The current applicable rate is 10% on the purchase price.

For the rest of transfers of real estate objects subject to VAT (locals, warehouses, garages, which are not transferred together with the dwelling, plots, etc..) is charged the general VAT of 21%. The buyer must pay it to the vendor at the time of the transmission of the property.

- **STAMP DUTY TAX**

In the moment of the transmission of a property, subject to VAT by public deed, the buyer is obliged to pay as well the STAMP DUTY TAX to the Balearic Tax Agency, which since January 2013 in general is a quote of 1.2 % of the purchase price of the property. This tax must be paid **within one month** to count from the date of the signature of the public deed of sale.

- **PERSONAL INCOME TAX**

The resident vendor must declare the transmission of a property in his personal income declaration of capital gains before June 30th of the following year of the transfer.

*Gains or losses are calculated on the **difference between the purchase price** (composed by the real price the property had been acquired, plus the amount of expenses and taxes inherent to the acquisition, exclusive interests and adjusted by applying the annually coefficients published in the Law of General Public Estimates) and the **value of the transfer** (which is the real amount, for which the transmission has been prosecuted, less the amount of expenses and inherent taxes of the transmission charged to the vendor).*

The valid rate is 21% on the gains up to 6.000 Euros, 25% on gains between 6.001 and 24.000 Euros and 27% from 24.000.01 Euros.

As new in 2013 has to be considered that the patrimonial gains obtained by transmissions of assets of resident natural persons in less than one year, from January 1st, 2013 have to be declared in the general part of the income declaration with rates up to 52 %, instead of being taxed as savings income of 21 to 27 %.

○ INCOME TAX FOR NON-RESIDENTS

In case the vendor is a non-resident, in the transmission of a property, he as well has to pay the personal income tax regarding the capital gains. The tax rate is 21 % on the **capital gain** out of the sale of the property.

Being the vendor a non-resident, the buyer (whether or not resident) **is required to withhold and pay to the Public Treasury 3% of the agreed price in a time limit of one month** from the date of sale.

This retention has for the vendor the character of **a payment on account of the taxes** regarding the gains derived out of the transmission. Therefore, the buyer has to hand over to the non-resident vendor the tax form 211 (with this form the retention has been paid), so that the vendor may subtract the amount of the retention from the rate which results from the profit statement. If the withhold amount exceeds the amount to be paid, a refund of the exceeded amount can be requested.

In the case this retention is not paid, the property will be burdened with the payment of the amount, which results the minor one between the retention and the corresponding tax.

The vendor is obliged to present the tax form 210 within a time limit of three months, to count from the end of the term of payment of the purchaser (one month).

5.- TAXES ASSOCIATED WITH THE POSSESSION OF A PROPERTY:

○ PROPERTY TAX (IBI):

All property owners in Spain (residents and non-residents) are obliged to pay the annual property tax to the Town Hall corresponding to the location of the property.

The amount of property tax is calculated by each municipality in base of the cadastral value of the property, applying a tax rate provided by the same Town Hall.

In the receipt appears the cadastral reference of the property, which is necessary to check the registration status of the property in the Cadastre and the cadastre value of the property, which is the base of calculation of other taxes on the property.

The deadline of payment varies depending of the municipality, although usually it is in September, October or November every year.

○ WEALTH TAX:

The wealth tax has temporarily been reestablished for the years 2011, 2012, 2013 and 2014, accruing on December 31st of each of these years.

A reduction of the taxable base regarding the exempt minimum of 700.000 Euros has been **adapted for residents and non-residents**.

Therefore, all persons are required to declare, whose declaration results in a payment of the taxes and in any case, those whose properties and rights, which are valued in more than 2.000.000 Euros, although the quote results negative.

Only natural persons are taxed.

The tax rate ranges from 0.2% to 2.5%, depending on the scale of the tax.

○ **INCOME TAX FOR NON-RESIDENTS**

If the property is purchased directly by a non-resident, an annual tax declaration has to be presented, accruing on December 31st every year.

The income to declare depends on the destination given to the property:

1º.- Imputed rents on urban real estate objects of proper use.

If the property is of proper use, the rate to be declared is the amount applying a 2% on the cadastral value of the property (in general) or 1.1 % (for properties with a cadastral value revised after January, 1st 1994). On top of this rate a 24.75% is charged (accrual years 2012-2013) and the deadline for settlement will be the complete year following the date of accrual.

2º.- Income from leased properties.

If the property is rented, the rate to be declared is the full amount obtained from the tenant, without deduction of any expenses. However, if the taxpayer is resident in another country of the European Union, the costs foreseen by the Law of Income Tax of natural persons may be subtracted in the established conditions.

The income is understood as received, when they can be required by the landlord or on the day of the payment (if this is earlier). On top of this amount is charged a 24.75% (accrual years 2012-2013).

The deadline for settlement depends on the result:

- If the result is a payment: During the first twenty days of the months of April, July, October and January regarding the income obtained in the previous calendar quarter.
- If the result is a quote zero: From 1st to 20th of January of the year, following to the accrual of income.
- If the result is a return: As of February, 1st of the year, following to the accrual of income.

This is a generic guide developed to provide general information of the legal procedures in the acquisition of properties in Spain by non-residents, please take into account that every individual case is different, reason why it is advisable to contact a qualified professional.

In ILLESLEX lawyers we understand the complexities of any real estate transaction and therefore we are able to give support our customers throughout the process, providing an integral and personalized service.

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